

In the Matter of Certificate of Service No. E-437155
Issued to: JOE FLORENTINA VALDEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOE FLORENTINA VALDEZ

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

On 17 and 24 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" supported by two specifications. The first specification alleges that while Appellant was serving as passengers' utilityman on board the American SS SELMA VICTORY, under authority of Certificate of Service No. E-437155, he had in his possession, on or about 12 March, 1947, approximately three pounds and four ounces of marijuana, contrary to law. (26 U.S.C. 2593). The second specification alleges that while Appellant was so serving he had in his possession, on or about 16 March, 1947, approximately three pounds and five ounces of marijuana, contrary to law. (26 U.S.C. 2593).

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel appointed by the Examiner. Originally, a plea of "guilty" was entered to each of the specifications; but, after having expressed the opinion that the Appellant's plea was inconsistent with his later explanation of the surrounding circumstances, the Examiner changed the plea to "not guilty" with respect to both specifications. At the conclusion of the hearing and after both parties had been given an opportunity to submit proposed findings and conclusions, the Examiner set out his findings of fact and concluded that the specifications and charge had been "proved". He then entered an order revoking Certificate of Service No. E-437155 and all other valid licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

Appellant contends in his appeal that he began to use narcotics in order to relieve himself of the mental strain which resulted from his active participation in the war and from the subsequent discovery that his home life in the United States had been broken up.

Appellant has been going to sea for seven years and there has been no previous disciplinary action taken against him except for an admonition received on 20 September, 1945, for absence without leave from the American SS LEO J. DUSTER at Naples, Italy.

FINDINGS OF FACT

On or about 12 and 16 March, 1947, Appellant was serving as a member of the crew in the capacity of passengers' utilityman on board the American SS SELMA VICTORY, under authority of Certificate of Service No. E-437155, while the ship was in Brooklyn, New York, and Jersey City, New Jersey, respectively, on the above dates.

On 12 March, 1947, a Customs Agent discovered about three pounds and four ounces of marijuana in a flour sack with the clothes of Appellant which were hanging outside of his locker in his forecastle. Appellant had found the marijuana some time prior thereto in the mattress located in the ship's hospital while looking for an ironing cord. He knew that it was marijuana and placed it with his personal effects. Appellant was taken into custody by the Customs Agent on 12 March, 1947, and appeared before the United States Commissioner in the Eastern District of New York.

Upon his release on bail on 16 March, 1947, Appellant returned to the ship to pick up his personal belongings. As he was leaving the ship he was again searched by a Customs Officer who discovered about three pounds and five ounces of marijuana secreted in a portable phonograph carried by the Appellant. This time, Appellant was taken before the United States Commissioner in the District of New Jersey.

In connection with each of these incidents, Appellant was indicted for violating 26 United States Code 2593, in that he did not pay the transfer tax imposed by law on all transferees of marijuana. The proceedings in the New Jersey court were transferred to the New York court. On 3 July, 1947, in the United States Court for the Eastern District of New York, Appellant was convicted on a plea of "guilty" to each of the charges and was sentenced to two and a half years imprisonment.

Appellant had started to smoke marijuana cigarettes in 1947 but he did not indulge in this diversion while he was aboard ship.

OPINION

That the judgment of conviction by a Federal court is res judicata of the issues decided by that judgment, is beyond questioning. Title 46, Code of Federal Regulations 137.15-5 which has the force and effect of law, states that where the same acts form the bases of the Federal charges and the charges in proceedings under Title 46 United States Code 239, the Federal court judgment of conviction is conclusive in the latter proceedings.

Obviously, the same facts are involved here as in the Federal court charges. Hence, the conviction in the Federal court supports a finding by the Coast Guard Examiner that Appellant be found "guilty" in this proceeding. The only recourse is to present evidence of such mitigating circumstances as will make it inadvisable to resort to an order of revocation despite the fact that it is the well established policy of the Coast Guard to impose such an order in any case involving the possession of narcotics.

Appellant has failed to set forth in his appeal any such circumstances which would indicate the wisdom of an order short of revocation of his certificate. In this connection, it has been remarked in previous decisions that the circumstances must be very extreme in order to be given any consideration looking to a change being made in such a revocation order. The reason for this attitude is well set out by the Examiner who heard this case:

"The possession of narcotics aboard merchant ships constitutes an insidious offense highly prejudicial to the safety of the ship and her personnel. This is true whether the possession of marihuana is for the personal use of the individual or crew member carrying it or for the transportation of the same aboard ship for import into this country. The possession of this narcotic aboard a ship is also dangerous in that it is liable to contribute to the addiction of other crew members to the use of it when it is available."

In view of the standard outlined above and the consistency with which this policy of revocation is adhered to in narcotic cases, it is clear that Appellant's appeal contains no inducement to moderate the Examiner's order.

Appellant contends that the reason he uses marijuana is to relieve the mental strain he is under. Rather than being an inducement to make the order less severe, it is my opinion that this strengthens the reasons for upholding the order since this fact indicates that Appellant will continue to use narcotics in an attempt to alleviate this mental condition. And regardless of how noble the causes may be which brought about the mental condition of Appellant, it cannot be denied that this does not lessen the danger to the lives and property of others when narcotics are brought aboard ships by members of the crew. For these reasons, the order of the Examiner must be sustained.

CONCLUSION and ORDER

The Order of the Examiner dated 24 May, 1949, should be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of sept, 1949.